

JURISDICTION AND VENUE

1. This Court has original jurisdiction to hear this Complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331, in that this action being brought under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*

2. Venue is proper in the United States District Court for the District of Maryland pursuant to 28 U.S.C. § 1391 because Defendant operates a place of business in Maryland, does business in this district, and because a substantial part of the events giving rise to the claims occurred in this district.

PARTIES

3. Defendant CBC National Bank (hereafter “CBC”) has bank charter class of national bank with the FDIC and is regulated by the Office of the Comptroller of Currency. CBC’s headquarters is located in Fernandina Beach Florida. According to its website (www.cbcnationalbankmortgage.com), Defendant operates a mortgage division with office locations in Lutherville and Towson, Maryland, as well as having mortgage offices in Arizona, California, Florida, Georgia, Indiana, Illinois, Michigan, Ohio, and Pennsylvania.

4. Defendant is engaged in interstate commerce by, among other things, selling mortgage loans and other financial products in its mortgage division. On Defendant’s website, it states: “Our staff consists of experienced mortgage banking professionals who are committed to providing extraordinary customer service, plus the convenience of a personal touch to every loan. CBC National Bank can provide you with

the best innovations in mortgage industry because we offer a variety of loan program options to meet your needs.”

5. Upon information and belief, Defendant’s gross annual sales made or business done has been \$500,000 per year or greater at all relevant times.

6. Defendant is, and has been, an “employer” engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. § 203(d).

7. Plaintiff Steven Szalczyk, Jr. (hereafter “Plaintiff”) is an adult resident of the state of Maryland who currently resides in Hunt Valley, Maryland. Plaintiff worked for Defendant as a Loan Officer from on or about November 2012 through on or about February 2013 at Defendant’s office located in Parkville, Maryland. Numerous other loan officers worked with the Plaintiff at this location.

8. Plaintiff, and others similarly situated, are current or former employees of Defendant within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

9. Plaintiff and others similarly situated have been employed by Defendant within two to three years prior to the filing of this lawsuit. *See* 29 U.S.C. § 255(a).

10. Plaintiff brings this action on behalf of himself and other similarly situated employees pursuant to 29 U.S.C. § 216(b).

11. Plaintiff and others similarly situated are individuals who were, or are, employed by Defendant as Loan Officers, or as employees with similar job duties throughout the country during the applicable statutory periods.

FACTUAL ALLEGATIONS

12. Plaintiff and others similarly situated worked as Loan Officers for Defendant.

13. Defendant is a financial institution that, among other things, sells financial products to customers including mortgage products.

14. As Loan Officers, Plaintiff and others similarly situated had or have the primary duty of selling mortgage loan products for Defendant.

15. Plaintiff and others similarly situated performed this duty primarily from Defendant's mortgage division offices located in Arizona, California, Florida, Georgia, Indiana, Illinois, Maryland, Michigan, Ohio, and Pennsylvania.

16. The FLSA requires covered employers, such as Defendant, to compensate all non-exempt employees at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty (40) hours per workweek. When calculating the regular rate of pay, it shall include all nondiscretionary compensation. The FLSA also requires that employers, such as Defendant, compensate all employees at a minimum wage for all hours worked.

17. Regardless of location, in practice, Defendant treated the Plaintiff and others similarly situated as exempt from overtime premium compensation under the FLSA.

18. Regardless of location, Defendant, upon information and belief, paid Plaintiff and others similarly situated under the same, or similar, compensation policy/practice. This compensation policy/practice would pay Plaintiff and others

similarly situated an hourly rate of pay for a set number of hours each week that was not based on actual hours worked along with commissions earned on their funded loans that were closed. Any monies paid as hourly wages would be later deducted from commissions earned (*i.e.*, hourly wages were treated as “draw” against future commissions”). Alternatively, the Defendant would just pay some Loan Officers straight commissions.

19. Defendant would pay other loan officers on a pure commission basis thereby denying them compensation in the form of minimum wage and also overtime on minimum wages when they worked in excess of forty per work week.

20. Under Defendant’s compensation policy/practice with Plaintiff and others similarly situated, Defendant failed to pay an overtime premium for hours worked in excess of forty per work week and payment for minimum wage for hours worked under forty per work week in violation of the FLSA. Defendant’s compensation agreement violated the FLSA in that it failed to include commission income in determining the overtime rate of pay.

21. Under Defendant’s compensation policy/practice with Plaintiff and others similarly situated who were paid under a “draw” scheme, the employees would earn the same amount of compensation regardless of hours actually worked. Therefore, no overtime premium was ever provided to these employees under Defendant’s compensation policy/practice. Defendant discouraged employees from reporting actual hours worked since it had no impact on total compensation paid under Defendant’s illegal compensation agreement.

22. Under Defendant's compensation policy/practice regarding loan officers who were for pure commissions earned on the sale of Defendant's financial products, the employees would work weeks without receiving any compensation at the minimum wage for hours worked, and whenever overtime was worked, no overtime pay based on this minimum wage. Under these circumstances, the Defendant did not require these loan officers to report hours worked in violation the FLSA.

23. Regardless of location, Plaintiff and others similarly situated, routinely worked in excess of forty hours per workweek during their employment with Defendant without receiving overtime compensation as required under the FLSA. On average, the Plaintiff estimates that he worked on average 55 hours each workweek without receiving any overtime premium as required under the FLSA. This occurred on a routine weekly basis throughout the Plaintiff's employment with Defendant.

24. Defendant was aware, or should have been aware, that Plaintiff and others similarly situated performed work that required payment of minimum wages and overtime compensation and that its nondiscretionary commission income must be included when calculating the overtime rate of pay.

25. Defendant's conduct was willful and in bad faith.

26. Regardless of location, Defendant routinely suffered and permitted Plaintiff and others similarly situated to work more than forty (40) hours per week and did not correctly pay them the overtime compensation that they were due.

27. Upon information and belief, Defendant did not keep accurate records of these hours worked by Plaintiff and others similarly situated as required by law.

28. Moreover, it is common knowledge within the financial industry that courts and the United States Department of Labor have found loan officers to be non-exempt and entitled to minimum wages and overtime compensation, and that commission income should be included in calculating their overtime rate of pay.

29. Defendant operates under a scheme to deprive loan officers of minimum wages and overtime compensation by treating them as exempt in practice; failing to accurately compensate at the correct overtime rate of pay; and by failing to make, keep, and preserve records of their hours worked.

30. Plaintiff and others similarly situated were deprived of overtime pay that they were guaranteed by law.

FLSA COLLECTIVE ACTION ALLEGATIONS

31. Plaintiff, on behalf of himself and others similarly situated, re-allege and incorporate by reference the above paragraphs as if fully set forth herein.

32. Plaintiff files this action on behalf of himself and all individuals similarly situated. The proposed Collective Class for the FLSA claims is defined as follows:

All persons who worked as a Loan Officers (or persons with similar job duties) for Defendant within three years prior to the filing of this Complaint (hereafter the “FLSA Collective”).

33. Plaintiff has consented in writing to be a part of this action pursuant to 29 U.S.C. § 216(b). Plaintiff’s signed consent form is attached as Exhibit A.

34. During the applicable statutory period, Plaintiff and the FLSA Collective routinely worked in excess of forty (40) hours per workweek without receiving overtime compensation for their overtime hours worked, and for hours worked under forty per

workweek, those working on a pure commission basis were denied minimum wages for hours worked.

35. Defendant failed to preserve records relating to these hours worked as required by 29 C.F.R § 516.2.

36. Plaintiff and the FLSA Collective are victims of Defendant's widespread, repeated, systematic and consistent illegal policies that have resulted in violations of their rights under the FLSA, 29 U.S.C. § 201 *et seq.*, and that have caused significant damage to Plaintiff and the FLSA Collective.

37. Defendant willfully engaged in a pattern of violating the FLSA, 29 U.S.C. § 201 *et seq.*, as described in this Complaint in ways including, but not limited to, failing to pay its employees minimum wages and overtime compensation.

38. Defendant's conduct constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255.

39. Defendant is liable under the FLSA for failing to properly compensate Plaintiff and others similarly situated, and, as such, notice should be sent to the FLSA Collective. There are numerous similarly situated current and former employees of Defendant who have suffered from Defendant's common policies and plans of treating its loan officers as exempt, and who would benefit from the issuance of a Court-supervised notice of this lawsuit and the opportunity to join. Those similarly situated employees are known to Defendant and are readily identifiable through Defendant's records.

CAUSES OF ACTION

**COUNT I – OVERTIME VIOLATIONS UNDER FEDERAL LAW
The Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*
On Behalf of Plaintiff and Those Similarly Situated**

40. Plaintiff, on behalf of himself and others similarly situated, re-allege and incorporate the preceding paragraphs by reference as if fully set forth herein.

41. The FLSA, 29 U.S.C. § 207, requires employers to pay employees at least the minimum wage for hours worked and one and one half times the regular rate of pay for all hours worked over forty (40) hours per workweek.

42. Defendant suffered and permitted Plaintiff and the FLSA Collective to routinely work without receiving minimum wage and to work more than forty (40) hours per week without overtime compensation.

43. Defendant's actions, policies, and/or practices as described above violate the FLSA's minimum wage overtime requirements by regularly and repeatedly failing to compensate Plaintiff and the FLSA Collective at the required overtime rate.

44. Defendant knew, or showed reckless disregard for the fact, that it failed to pay these individuals minimum wage and overtime compensation in violation of the FLSA.

45. As the direct and proximate result of Defendant's unlawful conduct, Plaintiff and the FLSA Collective have suffered, and will continue to suffer, a loss of income and other damages. Plaintiff and the FLSA Collective are entitled to liquidated damages and attorney's fees and costs incurred in connection with this claim.

46. By failing to accurately record, report, and/or preserve records of hours

worked by Plaintiff and the FLSA Collective, Defendant has failed to make, keep, and preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions and practice of employment, in violation of the FLSA, 29 U.S.C. § 201, *et seq.*

47. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a) as Defendant knew, or showed reckless disregard for, the fact that its compensation practices were in violation of these laws.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and others similarly situated, pray for relief as follows:

- a) Designation of this action as a collective action on behalf of the FLSA Collective and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA Collective apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual consent forms pursuant to 29 U.S.C. § 216(b);
- b) Judgment against Defendant finding it failed to pay Plaintiff and those similarly situated minimum wages and overtime as required under the FLSA;
- c) Judgment against Defendant for Plaintiff and those similarly situated for unpaid back wages, and back wages at the applicable overtime rates;
- d) An amount equal to their damages as liquidated damages;
- e) A finding that Defendant's violations of the FLSA are willful;
- f) All costs and attorneys' fees incurred prosecuting this claim;
- g) An award of prejudgment interest (to the extent liquidated damages are not awarded);

- h) Leave to add additional plaintiffs by motion, the filing of consent forms, or any other method approved by the Court;
- i) Leave to amend to add additional state law claims; and
- j) All further relief as the Court deems just and equitable.

DEMAND FOR JURY

The Plaintiff in the above captioned matter hereby demands a jury for all claims set forth herein.

Respectfully Submitted,



/s/ Brendan J. Donelon
Brendan J. Donelon
420 Nichols Road, Suite 200
Kansas City, Missouri 64112
Tel: (816) 221-7100
Fax: (816) 709-1044
brendan@donelonpc.com

ATTORNEYS FOR PLAINTIFF

/s/ Daniel A. Katz
Daniel A. Katz, Bar No. 13026
Lucy B. Bansal, Bar No. 06639
Law Offices of Gary M. Gilbert &
Associates. P.c.
1100 Wayne Avenue, Suite 900
Silver Spring, MD 20910
(301) 608-0880 x809 (Voice)
(301) 608-0881 (Fax)
dkatz@ggilbertlaw.com
lbansal@ggilbertlaw.com

Certificate of Service

Plaintiffs hereby certify that a true and correct copy of the above and foregoing was sent on December 1, 2015 to the following counsel of record pursuant to this Court's CM/ECF requirements:

Emmett F. McGee, Jr. (Federal Bar No. 08462)

Charles Kresslein (Federal Bar No. 22967)

Keith Hudolin (Federal Bar No. 13688)

JACKSON LEWIS P.C.

2800 Quarry Lake Drive, Suite 200

Baltimore, MD 21209

Telephone: (410) 415-2000

Facsimile: (410) 415-2001

emmett.mcgee@jacksonlewis.com

charles.kresslein@jacksonlewis.com

keith.hudolin@jacksonlewis.com